

AMENDED IN SENATE JUNE 21, 1999

AMENDED IN SENATE JUNE 14, 1999

SENATE BILL

No. 1146

Introduced by Senator Burton
(Principal coauthor: Senator Polanco)
(Coauthors: Senators Escutia, Haynes, and Karnette)
(Coauthors: Assembly Members Baugh, Cardoza, and
Granlund)

February 26, 1999

An act to amend Section 43104 of, and to add Sections 39027.3 and 43105.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1146, as amended, Burton. Motor vehicles: pollution control devices.

(1) Existing law authorizes the State Air Resources Board to adopt and implement emission standards for new motor vehicles to control emissions from those vehicles.

This bill would require the state board, for all motor vehicles certified in accordance with specified test procedures, to adopt regulations that would require motor vehicle manufacturers to take specified actions to make available information relating to motor vehicle emissions monitoring and testing, and diagnostic systems, as prescribed. The bill would require that those regulations allow for the imposition of reasonable business conditions as a condition of disclosure

requirements covering confidential, proprietary, or trade secret information.

The bill would require the executive officer of the state board, if he or she obtains credible evidence of a motor vehicle manufacturer's failure to comply with any of the requirements imposed by those regulations, to issue a notice of noncompliance to the manufacturer. The bill would permit the motor vehicle manufacturer to request a public hearing before the state board to contest the notice of noncompliance within a specified time period. The bill would authorize the state board, if the motor vehicle manufacturer fails to correct the violation within 30 days from the date of the public hearing, to impose a civil penalty on the manufacturer in the amount of \$25,000 per day per violation and, if the violation is not corrected within 90 days from the date of imposition of the penalty, to suspend *the* certification *process* of any motor vehicles or motor vehicle engines *not yet* certified by the state board for that manufacturer.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and
2 declares all of the following:

3 (a) There are over 26 million registered motor
4 vehicles in California, and those vehicles are relied upon
5 heavily by California residents to conduct their everyday
6 activities.

7 (b) The use of those motor vehicles results in hundreds
8 of tons of pollutants being emitted into California's air
9 every day, significantly affecting air quality and public
10 health and safety. To prevent unnecessary pollution, it is
11 in the best interests of this state to ensure that the ability
12 of California motorists to obtain service, repair, or
13 replacement of faulty emissions-related components of
14 their motor vehicles is not limited by the arbitrary
15 withholding of service, repair, or parts information by
16 motor vehicle manufacturers.



1 (c) Recent emissions standards adopted and
2 implemented by the State Air Resources Board for motor
3 vehicles manufactured after 1993 have resulted in the
4 development by vehicle manufacturers of “onboard
5 diagnostic computers,” that interface with the many
6 component parts of a vehicle’s emissions control system.
7 Essential service, repair, and parts information and tools
8 for interfacing with a vehicle’s onboard diagnostic
9 computer system are not readily available to
10 independent automotive repair technicians and facilities.
11 Accordingly, consumers ~~are~~ *may be* restricted to having
12 the service and repair of faulty emissions-related
13 components of a motor vehicle performed only by
14 franchised dealerships, and consumers ~~are~~ *may be* also
15 forced to purchase replacement parts manufactured
16 solely by or on behalf of the vehicle manufacturer. This
17 restriction of consumer choice and options is contrary to
18 the history of automotive repair, which saw the advent of
19 independent repair technicians and facilities and
20 independent aftermarket parts manufacturers as healthy
21 market competitors to vehicle manufacturers and their
22 dealerships.

23 (d) The arbitrary withholding of essential service,
24 repair, and parts information and tools by vehicle
25 manufacturers from independent automotive repair
26 technicians and independent aftermarket parts
27 manufacturers may result in improper and needlessly
28 costly repairs that could also endanger the public and
29 result in anticompetitive effects harmful to the best
30 interests of the state.

31 SEC. 2. Section 39027.3 is added to the Health and
32 Safety Code, to read:

33 39027.3. (a) “Covered person” means any person
34 engaged in the business of service or repair of motor
35 vehicles or the manufacture or remanufacture of
36 emissions-related motor vehicle parts for those motor
37 vehicles.

38 (b) “Emissions-related motor vehicle part” means any
39 automotive part that affects or that may affect emissions
40 from a motor vehicle, including replacement parts,

1 consolidated parts, rebuilt parts, remanufactured parts,
2 add-on parts, modified parts, and specialty parts.

3 (c) “Enhanced information” means information that
4 is specific for an original equipment manufacturer’s
5 brand of tools and equipment.

6 SEC. 3. Section 43104 of the Health and Safety Code
7 is amended to read:

8 43104. For the certification of new motor vehicles or
9 new motor vehicle engines, the state board shall adopt, by
10 regulation, test procedures and any other procedures
11 necessary to determine the following:

12 (a) Whether the vehicles or engines are in compliance
13 with the emission standards established pursuant to
14 Section 43101. The state board shall base its test
15 procedures on federal test procedures or on driving
16 patterns typical in the urban areas of California.

17 (b) Whether a manufacturer is in compliance with
18 Section 43105.5.

19 SEC. 4. Section 43105.5 is added to the Health and
20 Safety Code, to read:

21 43105.5. (a) For all motor vehicles certified in
22 accordance with the test procedures adopted pursuant to
23 Section 43104, the state board, not later than January 1,
24 2001, shall adopt regulations that require a motor vehicle
25 manufacturer to do all of the following, to the extent not
26 limited or prohibited by federal law (the regulations
27 adopted by the state board pursuant to this provision may
28 include subject matter similar to the subject matter
29 included in regulations adopted by the United States
30 Environmental Protection Agency):

31 (1) Make available on the Internet, within a
32 reasonable period of time, the full contents of all manuals,
33 technical service bulletins, and training materials
34 regarding emissions-related motor vehicle parts.

35 (2) Make the diagnostic tools necessary to service and
36 repair any of the manufacturer’s emissions-related motor
37 vehicle parts available for sale, within a reasonable period
38 of time, at a nondiscriminatory price to covered persons,
39 and make the enhanced information related to tools and

1 equipment available to equipment and tool companies in
2 an electronic format.

3 (3) If the motor vehicle manufacturer uses
4 reprogrammable computer chips in its motor vehicles,
5 provide equipment and tool companies with the
6 information that is provided by the manufacturer to its
7 dealerships to allow those companies to incorporate into
8 aftermarket tools the same reprogramming capability.

9 ~~(4) Provide to covered persons, within a reasonable~~
10 ~~period of time, a description of the operating parameters,~~
11 ~~electronic interface specifications, and physical attributes~~
12 ~~for all components monitored by the onboard diagnostic~~
13 ~~system. That information shall include, but is not limited~~
14 ~~to, all of the following for each monitoring system utilized~~
15 ~~by a manufacturer that has the potential of setting a fault~~
16 ~~code or illuminating the OBD II malfunction indicator~~
17 ~~light (MIL):~~

18 ~~(A) A description of the operation of the monitor,~~
19 ~~including a description of the parameters that are being~~
20 ~~monitored for each component being monitored, any~~
21 ~~enabling conditions involved, and the details of any~~
22 ~~rationality checks performed on the component and~~
23 ~~criteria for setting a fault code or MIL.~~

24 ~~(B) A listing of all OBD II Diagnostic Trouble Codes~~
25 ~~associated with the monitor.~~

26 ~~(C) A description of the typical entry conditions for~~
27 ~~the monitor to execute during vehicle operation.~~

28 ~~(D) A listing of monitor sequence, execution~~
29 ~~frequency, and typical duration.~~

30 ~~(E) A listing of typical malfunction thresholds for~~
31 ~~monitors, including the units in which they are displayed~~
32 ~~in Mode \$06 of the SAE J1979 Generic Scan Tool.~~

33 ~~(F) For OBD II parameters for specific vehicles that~~
34 ~~exceed the typical parameters required to be listed by~~
35 ~~subparagraphs (A) to (E), inclusive, by more than 5~~
36 ~~percent and are not otherwise available in Mode \$06 of~~
37 ~~the SAE J1979 Generic Scan Tool, the OBD II description~~
38 ~~shall indicate the deviation and provide a separate listing~~
39 ~~of the typical values for those vehicles.~~

~~(G) The information required by this paragraph shall not include algorithms, software codes, and specific calibration data beyond that available on Mode \$06 of the SAE J1979 Generic Scan Tool.~~

~~(H) Transfer functions for all OBD II monitored sensors and actuators. For sensors those functions include output voltage and amperage frequency or other signal as a function of input conditions. For actuators those functions include actuation and mechanical output as a function of input voltage and amperage frequency or other signal.~~

(4) Make available to all covered persons, within a reasonable period of time, a description of the operating parameters, electronic interface and performance specifications, including transfer functions, for all emissions related motor vehicle parts monitored by the onboard diagnostic system. That information shall be provided for each monitoring system utilized by a manufacturer that has the potential of setting a fault code or illuminating an onboard diagnostic OBD II and future implementation malfunction indicator light. The information required by this paragraph shall not include algorithms, software codes, and specific calibration data beyond that available on Mode \$06 of the SAE J1979 Generic Scan Tool.

(5) Not utilize any access or recognition code or any type of encryption that would prevent a vehicle owner from using a motor vehicle part that has not been manufactured by that manufacturer or any of its original equipment suppliers.

(6) Provide information regarding initialization procedures for dealing with immobilizer circuits or other lock-out devices necessary for properly repairing, rebuilding, installing, or otherwise reinitializing vehicle onboard computers that employ integral vehicle security systems.

~~(b)–~~

(7) All information provided under this subdivision shall be provided in a readily accessible electronic format that is compatible with computer systems that are

1 *commonly used by covered persons, and that is accessible*
2 *without the need for any decoding information or device.*

3 *(b) Any information required to be disclosed under*
4 *this section that the motor vehicle manufacturer can*
5 *demonstrate to the state board, on a case-by-case basis, is*
6 *proprietary or trade secret information shall be exempt*
7 *from disclosure unless the state board finds that the*
8 *disclosure of the information is necessary to mitigate any*
9 *anti-competitive effects or is otherwise in the public*
10 *interest. Any required disclosure of proprietary or trade*
11 *secret information covered by this section shall be subject*
12 *to the protections of subdivision (c).*

13 *(c) If the information required to be disclosed by a*
14 *motor vehicle manufacturer pursuant to subdivision (a)*
15 *is determined by the state board to be confidential,*
16 *proprietary, or a trade secret, the regulations adopted by*
17 *the state board shall allow for the imposition of reasonable*
18 *business conditions as a condition of disclosure, and may*
19 *include the imposition of punitive sanctions for the*
20 *improper release of information that has been*
21 *determined by the state board to be confidential,*
22 *proprietary, or a trade secret to competitors of the*
23 *manufacturer. The regulations adopted by the state*
24 *board shall, to the extent required by law, provide for the*
25 *payment of—just fair and reasonable compensation to the*
26 *vehicle manufacturer for the required disclosure of*
27 *information that has been determined by the state board*
28 *to be a trade secret. The regulations shall also provide for*
29 *the dissemination of trade secret information through*
30 *licensing agreements and the collection of fair and*
31 *reasonable licensing fees. If the board determines that*
32 *disclosure of any of the information required be disclosed*
33 *under subdivision (a) constitutes a taking of personal*
34 *property, a jury trial shall be held to determine the*
35 *amount of compensation for that taking, unless waived by*
36 *the motor vehicle manufacturer.*

37 ~~(e)~~

38 *(d) If the executive officer of the state board obtains*
39 *credible evidence that a motor vehicle manufacturer has*
40 *failed to comply with any of the requirements of this*

1 section or the regulations adopted by the state board, the
2 state board shall issue a notice to the manufacturer
3 warning of that noncompliance. The vehicle
4 manufacturer may request a public hearing before the
5 state board within 30 days from the date of the notice of
6 violation to contest that notice of violation. If, after the
7 hearing, the state board finds that the motor vehicle
8 manufacturer has failed to comply with any of the
9 requirements of this section or the regulations adopted by
10 the state board, and the manufacturer fails to correct the
11 violation within 30 days from the date of the hearing, the
12 state board shall impose a civil penalty on the
13 manufacturer in the amount of twenty-five thousand
14 dollars (\$25,000) per day per violation until the violation
15 is corrected. Each day a violation continues shall be
16 considered a separate violation. If the violation is not
17 corrected within 90 days from the date the penalty is
18 imposed, the state board shall suspend the certification
19 *process* of all motor vehicles or motor vehicle engines *not*
20 *yet* certified by the state board for that motor vehicle
21 manufacturer.

22 *(e) Nothing in this section is intended to authorize the*
23 *infringement of intellectual property rights embodied in*
24 *United States patents, trademarks, or copyrights, to the*
25 *extent those rights may be exercised consistently with*
26 *any other federal laws.*

